

Senate Study Bill 3067

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
ECONOMIC GROWTH BILL BY
CO=CHAIRPERSON BRUNKHORST)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to certified capital companies and providing a
2 certified capital company insurance premium tax credit and
3 penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5939XK 81
6 tm/cf/24

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1 1 Section 1. NEW SECTION. 15E.401 SHORT TITLE.
1 2 This division shall be known and may be cited as the "Small
1 3 Enterprise Employment Development Act".
1 4 Sec. 2. NEW SECTION. 15E.402 DEFINITIONS.
1 5 As used in this division, unless the context otherwise
1 6 requires:
1 7 1. "Affiliate" means, with respect to a certified capital
1 8 company or a certified investor, any of the following:
1 9 a. A person who, directly or indirectly, beneficially
1 10 owns, whether through rights, options, convertible interests,
1 11 or otherwise controls or holds power to vote, ten percent or
1 12 more of the outstanding voting securities or other voting
1 13 ownership interests of the certified capital company or
1 14 certified investor, as applicable.
1 15 b. A person, ten percent of whose outstanding voting
1 16 securities or other voting ownership interests are directly or
1 17 indirectly beneficially owned, whether through rights,
1 18 options, convertible interests, or otherwise controlled or
1 19 held with power to vote by the certified capital company or
1 20 certified investor, as applicable.
1 21 c. A person directly or indirectly controlling, controlled
1 22 by, or under common control with the certified capital company
1 23 or certified investor, as applicable.
1 24 d. A partnership in which the certified capital company or
1 25 certified investor, as applicable, is a general partner.
1 26 e. A person who is an officer, director, or agent of the
1 27 certified capital company or certified investor, as
1 28 applicable, or is an immediate family member of such an
1 29 officer, director, or agent.
1 30 2. "Certified capital company" means a person who is
1 31 certified by the department pursuant to section 15E.403.
1 32 3. "Certified capital company tax credit" means the tax
1 33 credit made available under section 15E.412.
1 34 4. "Certified capital investment" means an investment in a
1 35 certified capital company that is certified pursuant to
2 1 section 15E.404, subsection 2, and that fully funds either the
2 2 investor's equity interest in a certified capital company or a
2 3 qualified debt instrument that a certified capital company
2 4 issues.
2 5 5. "Certified investor" means a person who makes a
2 6 certified capital investment.
2 7 6. "Director" means the director of the department or the
2 8 director's designee.
2 9 7. "Investment date" means, with respect to each
2 10 investment pool, the date on which the last certified capital
2 11 investment that is part of that investment pool was invested
2 12 in the certified capital company.
2 13 8. "Investment pool" means the aggregate of all certified
2 14 capital investments in a certified capital company that are
2 15 made as part of the same transaction, except that investments

2 16 received more than thirty days apart shall not be considered
2 17 part of the same investment pool.

2 18 9. "Qualified business" means a business which is a
2 19 qualified business under section 15E.405.

2 20 10. "Qualified debt instrument" means a debt instrument
2 21 that meets all of the following criteria:

2 22 a. A certified capital company issues the instrument at
2 23 par value or at a premium.

2 24 b. The instrument has an original maturity date of at
2 25 least five years from the date on which it was issued.

2 26 c. The instrument has a repayment schedule that is no
2 27 faster than a level principal amortization over five years.

2 28 d. The instrument does not contain an equity component or
2 29 interest, distribution, or payment features which are related
2 30 to the certified capital company's profitability or the
2 31 performance of its investment portfolio, whether the component
2 32 or features are part of or attached to the qualified debt
2 33 instrument or are distributed or sold separately and purchased
2 34 or obtained by the holder of the qualified debt instrument or
2 35 any of its affiliates.

3 1 11. "Qualified distribution" means a distribution or
3 2 payment by a certified capital company for any of the
3 3 following:

3 4 a. The reasonable costs of forming, syndicating, managing,
3 5 or operating the certified capital company, provided that all
3 6 of the following apply:

3 7 (1) No such distribution or payment is made directly or
3 8 indirectly to a certified investor or an affiliate thereof.

3 9 (2) At the time the certified capital company closes an
3 10 investment pool and after deducting the aggregate of the costs
3 11 of organizing, forming, syndicating, insuring, and terminating
3 12 the certified capital company's obligations, the certified
3 13 capital company has, not including investments from qualified
3 14 investors, cash or permissible investments equal to at least
3 15 fifty percent of the amount of certified capital company tax
3 16 credit allocated to the certified capital company.

3 17 b. An annual management fee that does not exceed two and
3 18 one-half percent of the certified capital company's total
3 19 certified capital.

3 20 c. Reasonable and necessary fees paid for professional
3 21 services related to the operation of the certified capital
3 22 company.

3 23 d. A projected increase in federal or state taxes,
3 24 including penalties and interest on those taxes, of the equity
3 25 owners of the certified capital company if those amounts are
3 26 related to the certified capital company's ownership,
3 27 management, or operation.

3 28 12. "Qualified investment" means an investment in a
3 29 qualified business by a certified capital company that meets
3 30 the requirements under section 15E.406.

3 31 13. "Qualified investor" means a person who makes an
3 32 investment in a certified capital company that is not a
3 33 certified capital investment and that does not qualify for
3 34 certified capital company tax credits. The department may
3 35 establish by rule the requirements for a qualified investor.

4 1 14. "Targeted business" means a business that meets one or
4 2 more of the following requirements:

4 3 a. Has its principal place of business in an enterprise
4 4 zone certified pursuant to section 15E.195.

4 5 b. Has its principal place of business in an area
4 6 designated as a revitalization area pursuant to section 404.1.

4 7 c. Is a participant in the business resource center
4 8 program established pursuant to section 15E.21.

4 9 d. Has its principal place of business located in an area
4 10 designated as an economic enterprise area pursuant to section
4 11 15E.233.

4 12 e. Is a participant in a business accelerator program
4 13 established pursuant to section 15E.351.

4 14 f. Is engaged in one or more of the following industries:

4 15 (1) Biotechnology.

4 16 (2) Advanced manufacturing.

4 17 (3) Information technology.

4 18 g. Meets other criteria established by the department.

4 19 Sec. 3. NEW SECTION. 15E.403 CERTIFICATION OF CERTIFIED
4 20 CAPITAL COMPANIES.

4 21 1. A person applying to become a certified capital company
4 22 shall submit an application to the department. The department
4 23 shall grant or deny an application for certification within
4 24 thirty days of the date of application. If the department
4 25 denies the application, the department shall include with the
4 26 denial a detailed description of the grounds for the denial,

4 27 including suggestions for removal of those grounds.

4 28 2. The department shall certify a person as a certified
4 29 capital company if the department determines that all of the
4 30 following conditions have been met and the application is
4 31 competitive with other applications:

4 32 a. The person is a partnership, corporation, trust, or
4 33 limited liability company, whether organized for profit or not
4 34 for profit, that has as its primary business activity the
4 35 investment of cash in qualified businesses.

5 1 b. The person has a net worth, at the time of application,
5 2 of at least seven hundred fifty thousand dollars and possesses
5 3 at least five million dollars in cash, cash equivalents, or
5 4 marketable securities. The person shall submit with the
5 5 initial application an audited balance sheet with an
5 6 unqualified opinion from an independent certified public
5 7 accountant as of a date not more than thirty-five days prior
5 8 to the date the application is submitted.

5 9 c. The directors, officers, general partners, trustees,
5 10 managers, members, or persons having a similar function are
5 11 familiar with the requirements of this division.

5 12 d. At least two officers, directors, general partners,
5 13 trustees, managers, or members each have at least four years
5 14 of experience in the venture capital industry.

5 15 e. The person has included, in any offering material
5 16 involving the sale of securities, the statements required
5 17 under section 15E.404, subsection 1.

5 18 f. The person has paid a nonrefundable application fee of
5 19 seven thousand five hundred dollars.

5 20 g. The person has not engaged in dishonest or unethical
5 21 practices as the department may define by rule adopted
5 22 pursuant to chapter 17A.

5 23 3. The department may certify a person as a certified
5 24 capital company if the company has been previously qualified
5 25 under section 15E.208, has a net worth at the time of the
5 26 application of at least five hundred thousand dollars, and has
5 27 at least five hundred thousand dollars in cash, cash
5 28 equivalents, or marketable securities. The company must
5 29 include in any offering material involving the sale of
5 30 securities relying upon this section the statements required
5 31 under section 15E.404, subsection 1.

5 32 4. The department shall adopt rules pursuant to chapter
5 33 17A relating to procedures for defining conflicts of
5 34 interests.

5 35 Sec. 4. NEW SECTION. 15E.404 INVESTMENTS IN CERTIFIED
6 1 CAPITAL COMPANIES.

6 2 1. Any offering material involving the sale of securities
6 3 of a certified capital company shall include all of the
6 4 following statements:

6 5 a. "By authorizing the formation of a certified capital
6 6 company, the state does not necessarily endorse the quality of
6 7 management or the potential for earnings of the company and is
6 8 not liable for damages or losses to a certified investor in
6 9 the certified capital company. Use of the word "certified" in
6 10 an offering is not a recommendation or endorsement of the
6 11 investment by the Department of Economic Development."

6 12 b. "Investments in a prospective certified capital company
6 13 prior to the time the company is certified are not eligible
6 14 for a certified capital company tax credit under section
6 15 15E.412 of the Iowa Code. Investments in a certified capital
6 16 company are not eligible for a certified capital company tax
6 17 credit under section 15E.412 of the Iowa Code, unless the
6 18 proposed investment is certified under section 15E.404,
6 19 subsection 2 of the Iowa Code, before the investment is made.
6 20 In the event that certain statutory provisions are violated,
6 21 the state may require forfeiture of unused certified capital
6 22 company tax credits and repayment of used certified capital
6 23 company tax credits."

6 24 2. Certification of capital investments shall occur
6 25 according to the following procedure:

6 26 a. Application for certification of a capital investment
6 27 shall be submitted by providing notice to the department on a
6 28 form prescribed by the department. The notice shall include
6 29 the name of the person applying for certification, the name of
6 30 the certified capital company, the amount of the proposed
6 31 investment, and any other information specified by the
6 32 department. The notice shall also include an undertaking by
6 33 the person to make the capital investment within five days
6 34 after the department notifies the person that the capital
6 35 investment has been certified.

7 1 b. The department may certify a capital investment under
7 2 this subsection only if, after the certification, the

7 3 department will not have certified a total of more than one
7 4 hundred million dollars in certified capital investments under
7 5 this subsection. The department shall not certify more than
7 6 twenty-five percent of the total certified capital investments
7 7 allowed under this paragraph for investments in a certified
7 8 capital company that has been previously qualified under
7 9 section 15E.208. A certified capital company, together with
7 10 its affiliates, shall not file applications on behalf of its
7 11 certified investors to make certified capital investments in
7 12 excess of the maximum amount of investments that may be
7 13 certified under this subsection.

7 14 c. Prior to the first day of the thirteenth month
7 15 beginning after the effective date of this Act, the department
7 16 shall not certify an investment under this subsection if,
7 17 after the certification, the certified investor, together with
7 18 all affiliates of the certified investor, would have invested
7 19 more than fifteen million dollars in certified capital
7 20 investments.

7 21 d. If, as a result of the limitations under paragraph "b"
7 22 or "c", the department does not certify the full amount
7 23 requested in applications for certified capital investments
7 24 submitted under paragraph "a", the department shall allocate
7 25 the amounts available for certification on a pro rata basis in
7 26 accordance with this paragraph. The pro rata allocation for
7 27 each certified investor shall be the product of both of the
7 28 following:

7 29 (1) A fraction, the numerator of which is the amount of
7 30 the certified capital company tax credit requested on behalf
7 31 of the certified investor and the denominator of which is the
7 32 total amount of all certified capital company tax credits
7 33 requested on behalf of all certified investors.

7 34 (2) The total amount of investments for which certified
7 35 capital tax credits may be allowed under paragraph "b".

8 1 3. An insurance company, group of insurance companies,
8 2 affiliate of an insurance company, or group of such affiliates
8 3 shall not beneficially own, directly or indirectly, whether
8 4 through rights, options, convertible interests, or otherwise,
8 5 ten percent or more of the equity securities in, be a general
8 6 partner or manager of, or otherwise control the investments of
8 7 a certified capital company. This subsection does not
8 8 preclude such person from exercising such person's legal
8 9 rights and remedies, including interim management of a
8 10 certified capital company, in the event that a certified
8 11 capital company is in default of its statutory or contractual
8 12 obligations to such person.

8 13 4. Capital investments shall not be certified on behalf of
8 14 the certified investors of a certified capital company unless
8 15 the aggregate amount of capital certified on behalf of all of
8 16 the certified investors of such certified capital company
8 17 would be at least five million dollars, after giving effect to
8 18 any allocation required by subsection 2, paragraph "d". Any
8 19 capital investments that are not allocated to the certified
8 20 investors of a certified capital company shall be reallocated
8 21 to the other capital companies making applications for
8 22 certified capital investments on the same day in accordance
8 23 with the provisions of subsection 2, paragraph "d", as if the
8 24 certified capital company which received no allocation
8 25 pursuant to this subsection had never submitted applications
8 26 for certified capital investments.

8 27 5. Capital investments shall not be certified on behalf of
8 28 the certified investors of a certified capital company unless
8 29 the certified capital company has received irrevocable written
8 30 commitments from qualified investors stating that such
8 31 qualified investors will invest amounts with the certified
8 32 capital company which total at least fifty percent of the
8 33 amount of capital investment for which the certified capital
8 34 company receives certification. Such investments from
8 35 qualified investors must be received within two years of the
9 1 date on which the certified capital company receives
9 2 certification from the department.

9 3 Sec. 5. NEW SECTION. 15E.405 QUALIFIED BUSINESSES.

9 4 1. A business is a qualified business if the business is
9 5 in need of venture capital and is unable to obtain sufficient
9 6 conventional financing, as defined by the department, and if
9 7 all of the following requirements are met at the time that a
9 8 certified capital company, or any affiliate of the certified
9 9 capital company, makes its first investment in the business:

9 10 a. The business is headquartered in this state and its
9 11 principal business operations are located in this state.

9 12 b. The business has no more than one hundred employees, at
9 13 least seventy-five percent of whom are employed in the state.

9 14 c. During the two most recent fiscal years of the
9 15 business, the business had, together with all of the
9 16 affiliates of the business, an average annual net income,
9 17 after federal income taxes and excluding any carryover losses,
9 18 of not more than five million dollars as determined in
9 19 accordance with generally accepted accounting principles.

9 20 d. The business has, together with the affiliates of the
9 21 business, a net worth that is not in excess of fifteen million
9 22 dollars.

9 23 e. The business is not predominately engaged in the
9 24 provision of professional services provided by accountants,
9 25 attorneys, or physicians.

9 26 f. The business is not engaged in the development of real
9 27 estate for resale.

9 28 g. The business is not engaged in banking or lending and
9 29 does not make any loans to, or investments in, certified
9 30 capital companies.

9 31 h. The business is predominantly engaged in any of the
9 32 following:

9 33 (1) Manufacturing, processing, or assembling products.

9 34 (2) Conducting research and development.

9 35 (3) Providing services.

10 1 i. It is the intent of the business to provide long-term
10 2 attractive compensation packages with many of the compensation
10 3 packages for owners and employees to be risk and venture-based
10 4 with a focus on future returns.

10 5 j. The business intends to retain its operations and
10 6 employees in the state after receipt of investments from a
10 7 certified capital company.

10 8 2. A certified capital company may, prior to making an
10 9 investment in a specified business, request a written opinion
10 10 from the department that a business in which it proposes to
10 11 invest is a qualified business. If the department determines
10 12 that the business meets the requirements under subsection 1,
10 13 the department shall issue a written opinion stating that the
10 14 business is a qualified business. If the department
10 15 determines that the business in which the certified capital
10 16 company proposes to invest does not meet the requirements
10 17 under subsection 1, paragraphs "a" through "j", the department
10 18 may consider the business a qualified business and approve the
10 19 investment if the department determines that the proposed
10 20 investment will further economic development in this state.

10 21 3. Upon approval by the department, any business which is
10 22 classified as a qualified business at the time of the first
10 23 investment in the business by a certified capital company
10 24 shall remain classified as a qualified business and may
10 25 receive follow-on investments from any certified capital
10 26 company or any of its affiliates, and the follow-on
10 27 investments shall be qualified investments even though the
10 28 business does not meet the definition of a qualified business
10 29 at the time of such follow-on investments, provided that at
10 30 the time of the follow-on investment the business certifies in
10 31 writing that it is unable to obtain conventional financing,
10 32 which means that the business has failed in an attempt to
10 33 obtain funding for a loan from a bank or other commercial
10 34 lender or that the business cannot reasonably be expected to
10 35 qualify for such financing under the standards of commercial
11 1 lending.

11 2 Sec. 6. NEW SECTION. 15E.406 OPERATION OF CERTIFIED
11 3 CAPITAL COMPANIES.

11 4 1. In order for a certified capital company to prevent
11 5 disqualification of an investment pool under section 15E.409,
11 6 the certified capital company shall ensure that the investment
11 7 pool makes qualified investments in accordance with the
11 8 schedule under subsection 2. An investment is a qualified
11 9 investment if the investment meets all of the following
11 10 requirements:

11 11 a. The investment is a cash investment in a qualified
11 12 business for the purchase of any of the following:

11 13 (1) An equity security of the qualified business.

11 14 (2) A debt security of the qualified business if the debt
11 15 has a maturity of at least five years and if one of the
11 16 following conditions is met:

11 17 (a) The debt is unsecured.

11 18 (b) The debt is convertible into equity securities or
11 19 equity participation instruments such as options or warrants.

11 20 b. As a condition of the investment, the qualified
11 21 business agrees not to use the proceeds from the investment
11 22 for the purpose of relocating its operations.

11 23 c. As a condition of the investment, the qualified
11 24 business agrees, as long as the certified capital company

11 25 continues to hold the investment, not to relocate its
11 26 headquarters out of this state.

11 27 d. As a condition of the investment, the qualified
11 28 business agrees, as long as the certified capital company
11 29 continues to hold the investment, to maintain at least
11 30 seventy-five percent of its employees in this state.

11 31 e. As a condition of the investment, the qualified
11 32 business agrees, as long as the certified capital company
11 33 continues to hold the investment, to maintain at least
11 34 seventy-five percent of its employees at work sites that were
11 35 maintained by the qualified business at the time that the
12 1 investment was made, unless the qualified business obtains an
12 2 exemption from the department under this paragraph. The
12 3 department may grant an exemption unless it determines that
12 4 the qualified business is locating the employees at new sites
12 5 to take advantage of lower wage rates in the areas where the
12 6 new sites are located.

12 7 f. As an alternative to a qualified business making the
12 8 agreements set forth in paragraphs "c", "d", and "e", a
12 9 certified capital company making the investment may agree that
12 10 if, during the period in which its investment in such
12 11 qualified business is outstanding or within three months after
12 12 the termination or repayment of such investment, the qualified
12 13 business relocates its headquarters outside of this state or
12 14 fails to continue to satisfy the conditions set forth in
12 15 paragraph "d" or "e", then the cumulative amount of qualified
12 16 investments for the investment pool from which such qualified
12 17 investments were made shall be reduced by the amount of the
12 18 qualified investment in such business for the purposes of
12 19 section 15E.408 only, unless either of the following apply:

12 20 (1) The certified capital company invests an amount, at
12 21 least equal to the investment within six months of the
12 22 relocation or failure to satisfy the conditions set forth in
12 23 paragraph "d" or "e", as applicable.

12 24 (2) The qualified business demonstrates that it has
12 25 returned its headquarters to this state or has reestablished
12 26 compliance with the conditions set forth in paragraph "d" or
12 27 "e", as applicable, within three months of such relocation or
12 28 failure, as applicable.

12 29 2. a. A certified capital company shall ensure that each
12 30 of its investment pools makes qualified investments according
12 31 to the following schedule:

12 32 (1) Within two years after the investment date for a
12 33 particular investment pool, the certified capital company
12 34 shall have made qualified investments cumulatively equal to at
12 35 least twenty-five percent of the investment pool.

13 1 (2) Within three years after the investment date for a
13 2 particular investment pool, the certified capital company
13 3 shall have made qualified investments cumulatively equal to at
13 4 least forty percent of the investment pool.

13 5 (3) Within four years after the investment date for a
13 6 particular investment pool, the certified capital company
13 7 shall have made qualified investments cumulatively equal to at
13 8 least fifty percent of the investment pool with at least ten
13 9 percent of such qualified investments having been made in
13 10 targeted businesses.

13 11 (4) Within seven years after the investment date for a
13 12 particular investment pool, the certified capital company
13 13 shall have made qualified investments cumulatively equal to at
13 14 least one hundred percent of the investment pool with at least
13 15 ten percent of such qualified investments having been made in
13 16 targeted businesses.

13 17 b. The proceeds of all capital of a qualified investment
13 18 returned to a certified capital company by a qualified
13 19 business may be placed in new qualified investments, which
13 20 shall count toward the percentage requirements under paragraph
13 21 "a" and section 15E.408, subsection 2. The department shall
13 22 adopt rules that provide that proceeds from the sale of an
13 23 investment in a qualified business that are reinvested in that
13 24 qualified business, or an affiliate of the qualified business,
13 25 shall be only partially counted toward the percentage
13 26 requirements under paragraph "a", section 15E.408, subsection
13 27 2, and section 15E.409, subsection 4, paragraph "a",
13 28 subparagraph (2).

13 29 3. All certified capital investments in a certified
13 30 capital company that are not invested in qualified investments
13 31 may be held or invested by the certified capital company as it
13 32 considers appropriate, except that a certified capital company
13 33 shall not invest certified capital investments in an insurance
13 34 company or in an affiliate of an insurance company.

13 35 4. A certified capital company shall not make a qualified

14 1 investment in a person if, at the time of the investment, more
14 2 than fifteen percent of the total certified capital of the
14 3 certified capital company would be invested in that person and
14 4 affiliates of that person.

14 5 5. A certified capital company shall not be managed or
14 6 controlled by, or have a general partner that is, an insurance
14 7 company or an affiliate of an insurance company.

14 8 Sec. 7. NEW SECTION. 15E.407 REPORTING REQUIREMENTS AND
14 9 FEES.

14 10 1. As soon as practical after the receipt of a certified
14 11 capital investment, a certified capital company shall report
14 12 all of the following to the department:

14 13 a. The name of the certified investor from which the
14 14 certified capital investment was received, including the
14 15 certified investor's tax identification number.

14 16 b. The amount of the certified capital investment.

14 17 c. The date on which the certified capital investment was
14 18 received by the certified capital company.

14 19 2. As soon as practical after the receipt of information
14 20 by the certified capital company that a qualified business has
14 21 violated an agreement made under section 15E.406, subsection
14 22 1, paragraphs "b" through "e", the certified capital company
14 23 shall notify the department of the violation and the facts
14 24 giving rise to the violation.

14 25 3. On or before January 31 each year, a certified capital
14 26 company shall report all of the following to the department:

14 27 a. The amount of the certified capital company's certified
14 28 capital at the end of the preceding calendar year.

14 29 b. Whether the certified capital company has invested more
14 30 than fifteen percent of its total certified capital in any one
14 31 person.

14 32 c. All qualified investments that the certified capital
14 33 company has made during the previous calendar year and the
14 34 investment pool from which each qualified investment was made.

14 35 4. Within ninety days of the end of the certified capital
15 1 company's fiscal year, the certified capital company shall
15 2 provide to the department a copy of its annual audited
15 3 financial statements, including the opinion of an independent
15 4 certified public accountant. The audit shall address the
15 5 methods of operation and conduct of the business of the
15 6 certified capital company to determine whether the certified
15 7 capital company is complying with this division and the rules
15 8 adopted pursuant to this division, including whether certified
15 9 capital investments have been invested in the manner required
15 10 under section 15E.406. The financial statements provided
15 11 under this subsection shall be segregated by investment pool
15 12 and shall be separately audited on that basis to allow the
15 13 department to determine whether the certified capital company
15 14 is in compliance with section 15E.406, subsection 2.

15 15 5. On or before January 31 of each year, a certified
15 16 capital company shall pay a nonrefundable certification fee of
15 17 five thousand dollars to the department, unless January 31 is
15 18 within six months of the date on which the certified capital
15 19 company was certified under section 15E.403. If a certified
15 20 capital company fails to pay its certification fee on or
15 21 before that date, the company must pay, in addition to the
15 22 certification fee, a late fee of five thousand dollars to
15 23 continue its certification.

15 24 6. If the department determines that a document submitted
15 25 by a certified capital company under this section contains a
15 26 trade secret as defined in section 550.2, the information
15 27 shall be treated as a confidential trade secret not subject to
15 28 release under section 22.7.

15 29 7. The department may impose an administrative penalty on
15 30 a certified capital company that violates this division. The
15 31 amount of the penalty shall not exceed twenty-five thousand
15 32 dollars, and each day a violation continues or occurs is a
15 33 separate violation for the purpose of imposing a penalty. The
15 34 amount of the penalty shall be based on all of the following:

15 35 a. The seriousness of the violation, including the nature,
16 1 circumstances, extent, and gravity of the violation.

16 2 b. The economic harm caused by the violation.

16 3 c. The history of previous violations.

16 4 d. The amount necessary to deter a future violation.

16 5 e. Efforts to correct the violation.

16 6 f. Any other matter that justice may require.

16 7 A proceeding to impose the penalty is considered to be a
16 8 contested case proceeding under chapter 17A.

16 9 Sec. 8. NEW SECTION. 15E.408 DISTRIBUTIONS.

16 10 1. A certified capital company may make a distribution or
16 11 payment only if one of the following conditions is met:

16 12 a. The distribution or payment is a qualified
16 13 distribution.
16 14 b. The department made a written determination that the
16 15 distribution or payment may be made without adversely
16 16 affecting the ability of the certified capital company to make
16 17 qualified investments in an amount cumulatively equal in the
16 18 aggregate to one hundred percent of the certified capital
16 19 investment in the investment pool from which the distribution
16 20 or payment is to be made.

16 21 c. The certified capital company has made qualified
16 22 investments in an amount cumulatively equal in the aggregate
16 23 to one hundred percent of the certified capital investments in
16 24 the investment pool and has made investments in targeted
16 25 businesses equal in the aggregate to at least ten percent of
16 26 the certified capital investments in the investment pool.

16 27 d. The distribution or payment is payment of principal or
16 28 interest owed to a debt holder of a certified capital company,
16 29 even if the debt holder is also a holder of equity and even if
16 30 the indebtedness is a certified capital investment.

16 31 2. At the time of making such a distribution after
16 32 satisfying the requirements of subsection 1, the certified
16 33 capital company shall pay to the department an amount equal to
16 34 ten percent of all equity distributions which would be in
16 35 excess of a fifteen percent return on investment on the
17 1 certified investment capital invested in the certified capital
17 2 company.

17 3 Sec. 9. NEW SECTION. 15E.409 COMPLIANCE REVIEWS ==
17 4 DECERTIFICATION == DISQUALIFICATION.

17 5 1. The department shall conduct an annual review of each
17 6 certified capital company to determine if the certified
17 7 capital company is complying with the requirements of this
17 8 division, to advise the certified capital company regarding
17 9 the status of its investments as qualified investments, and to
17 10 ensure that an investment has not been made in violation of
17 11 this division. The cost of the annual review shall be paid by
17 12 each certified capital company according to a reasonable fee
17 13 schedule adopted by the department.

17 14 2. Any material violation of section 15E.406, subsection
17 15 2, is a ground for disqualification of the noncomplying
17 16 investment pool. If the department determines that the
17 17 certified capital company is not in compliance with section
17 18 15E.406, subsection 2, with respect to an investment pool, the
17 19 department shall send a written notice to the certified
17 20 capital company and the department of revenue stating that the
17 21 investment pool has been disqualified.

17 22 3. Any material violation of section 15E.406, subsections
17 23 2 through 4, or section 15E.407, subsections 1 through 4, is a
17 24 ground for decertification of the noncomplying certified
17 25 capital company. If the department determines that the
17 26 certified capital company is not in compliance with section
17 27 15E.406, subsections 2 through 4, or section 15E.407,
17 28 subsections 1 through 4, the department shall send a written
17 29 notice to the certified capital company that the certified
17 30 capital company may be subject to decertification in one
17 31 hundred twenty days from the date on which the notice was
17 32 mailed, unless the certified capital company brings itself
17 33 into full compliance. If at the end of the one-hundred=
17 34 twenty-day period the certified capital company has not
17 35 brought itself into full compliance, the department shall send
18 1 a notice to the certified capital company and the commissioner
18 2 of insurance stating that the certified capital company has
18 3 been decertified.

18 4 4. a. A certified capital company may voluntarily
18 5 decertify itself as a certified capital company if any of the
18 6 following conditions are met:

18 7 (1) It has been at least ten years since the last
18 8 certified capital investment was made in the certified capital
18 9 company.

18 10 (2) The certified capital company has made qualified
18 11 investments in an amount cumulatively equal to at least one
18 12 hundred percent of the certified capital investment in the
18 13 certified capital company.

18 14 b. A certified capital company wishing to decertify itself
18 15 under this subsection shall send a notice to the department
18 16 certifying that the certified capital company is eligible for
18 17 decertification under paragraph "a". The decertification is
18 18 effective on the date that the notice under this paragraph is
18 19 received by the department.

18 20 5. Approval by the department of a voluntary
18 21 decertification of a certified capital company shall be
18 22 required prior to the voluntary decertification if the

18 23 decertification occurs within five years from the date the
18 24 certified capital company was originally certified.

18 25 6. Decertification of a certified capital company or
18 26 disqualification of an investment pool has the effects
18 27 specified in section 15E.412.

18 28 7. The department shall notify a certified investor when
18 29 the certified capital company tax credit arising from a
18 30 certified investment is no longer subject to recapture and
18 31 forfeiture under section 15E.412.

18 32 Sec. 10. NEW SECTION. 15E.410 DEPARTMENT EVALUATION OF
18 33 THE PROGRAM.

18 34 Beginning on January 31, 2008, and on every January 31 of
18 35 each even-numbered year thereafter, the department shall
19 1 submit a report to the general assembly regarding the program
19 2 under this division. The report shall include all of the
19 3 following:

19 4 1. The total amount of certified capital investments made
19 5 during the previous two calendar years, as well as the total
19 6 amount of certified capital investments made since July 1,
19 7 2006.

19 8 2. Statistical information on the qualified investments
19 9 made by certified capital companies during the previous two
19 10 calendar years.

19 11 3. The department's assessment of the number of jobs
19 12 created in this state during the previous two calendar years
19 13 as a result of the certified capital company program under
19 14 this division.

19 15 Sec. 11. NEW SECTION. 15E.411 RULES.

19 16 The department shall adopt rules pursuant to chapter 17A
19 17 necessary to administer this division.

19 18 Sec. 12. NEW SECTION. 15E.412 CERTIFIED CAPITAL COMPANY
19 19 INSURANCE PREMIUM TAX CREDIT.

19 20 1. A certified investor which is an insurance company
19 21 organized under the laws of this state or admitted to do
19 22 business in this state shall earn, two years after it makes a
19 23 certified capital investment, a vested tax credit against the
19 24 insurance premium tax liability of the certified investor
19 25 under chapter 432, or similar taxes, equal to one hundred
19 26 percent of the certified investor's certified capital
19 27 investment. A certified investor shall be entitled to claim
19 28 up to ten percent of the vested premium tax credit in any
19 29 taxable year of the certified investor. The credit to be
19 30 applied against a certified investor's premium tax liability
19 31 in any one year shall not exceed such certified investor's
19 32 premium tax liability for such taxable year. Any credit in
19 33 excess of the tax liability for a taxable year may be credited
19 34 to the tax liability for succeeding taxable years until
19 35 depleted.

20 1 2. If a certified capital company is decertified, or an
20 2 investment pool is disqualified, under section 15E.409, before
20 3 the certified capital company fulfills the investment
20 4 requirement under section 15E.406, subsection 2, paragraph
20 5 "a", subparagraph (1), with respect to the investment pool, a
20 6 certified investor that has received a tax credit under this
20 7 section shall be subject to a recapture tax equal to the tax
20 8 credit claimed with respect to the investment pool. A
20 9 certified investor shall not claim any remaining tax credits
20 10 with respect to that investment pool.

20 11 3. If a certified capital company fulfills the investment
20 12 requirement under section 15E.406, subsection 2, paragraph
20 13 "a", subparagraph (1), with respect to the investment pool but
20 14 the certified capital company is decertified, or an investment
20 15 pool is disqualified under section 15E.409, before the
20 16 certified capital company fulfills the investment requirement
20 17 under section 15E.406, subsection 2, paragraph "a",
20 18 subparagraph (2), for that investment pool, a certified
20 19 investor that has received a tax credit under this section
20 20 with respect to that investment pool shall be subject to a
20 21 recapture tax equivalent to all tax credits claimed under this
20 22 section for taxable years after the taxable year that includes
20 23 the second anniversary of the investment date of the
20 24 investment pool. A certified investor shall not claim any
20 25 remaining tax credits for taxable years after the taxable year
20 26 that includes the second anniversary of the investment date of
20 27 the investment pool.

20 28 4. If a certified capital company fulfills the investment
20 29 requirement under section 15E.406, subsection 2, paragraph
20 30 "a", subparagraphs (1) and (2), with respect to the investment
20 31 pool but the certified capital company is decertified, or an
20 32 investment pool is disqualified under section 15E.409, before
20 33 the certified capital company fulfills the investment

20 34 requirement under section 15E.406, subsection 2, paragraph
20 35 "a", subparagraph (3), for that investment pool, a certified
21 1 investor that has received a tax credit under this section
21 2 with respect to that investment pool shall be subject to a
21 3 recapture tax equivalent to all tax credits claimed under this
21 4 section for taxable years after the taxable year that includes
21 5 the third anniversary of the investment date of the investment
21 6 pool. A certified investor shall not claim any remaining tax
21 7 credits for taxable years after the taxable year that includes
21 8 the third anniversary of the investment date of the investment
21 9 pool.

21 10 5. If a certified capital company satisfies the investment
21 11 requirements under section 15E.406, subsection 2, paragraph
21 12 "a", with respect to the investment pool, but the certified
21 13 capital company is decertified, a certified investor that has
21 14 received a tax credit under this section with respect to that
21 15 investment pool shall not be subject to a recapture tax with
21 16 respect to the tax credits previously utilized or forfeit any
21 17 unused credits, provided that such decertification did not
21 18 occur prior to the fourth anniversary of the investment date
21 19 of the investment pool. If the decertification did occur
21 20 prior to the fourth anniversary of the investment date of the
21 21 investment pool, all tax credits claimed or to be claimed
21 22 prior to such anniversary shall not be subject to recapture or
21 23 forfeiture, but all credits to be taken after such anniversary
21 24 shall be forfeited.

21 25 6. A certified investor may sell a certified capital
21 26 company tax credit to another insurance company organized
21 27 under the laws of this state or admitted to do business in
21 28 this state if the certified investor notifies the department
21 29 of revenue of the sale and includes with the notification a
21 30 copy of the transfer documents.

21 31 7. Once a certified capital company has voluntarily
21 32 decertified all investment pools under its control, the
21 33 certified capital company shall not be subject to regulation
21 34 by the department. However, after a certified capital company
21 35 has voluntarily decertified, the department shall continue to
22 1 monitor any qualified business which received an investment
22 2 from the decertified certified capital company and make an
22 3 annual report to the general assembly by January 31 of each
22 4 year regarding the monitoring of qualified businesses. The
22 5 report shall include the number of jobs created by the
22 6 qualified business, the average wage of the jobs in that
22 7 qualified business, and other useful information as deemed
22 8 appropriate by the department which would illustrate the
22 9 impact the business has on the economy of the state. The
22 10 department shall continue to monitor and report to the general
22 11 assembly on the qualified business until all tax credits have
22 12 been claimed by the certified investors of that decertified
22 13 certified capital company or ten years have elapsed from the
22 14 date the decertified certified capital company was certified,
22 15 whichever is longer.

22 16 EXPLANATION

22 17 This bill relates to certified capital companies and
22 18 providing for a certified capital company insurance premium
22 19 tax credit.

22 20 The bill provides that a person applying to become a
22 21 certified capital company shall submit an application to the
22 22 department of economic development. The bill requires the
22 23 department to certify a person as a certified capital company
22 24 if the department determines that the person is a partnership,
22 25 corporation, trust, or limited liability company, whether
22 26 organized for profit or not for profit, that has as its
22 27 primary business activity the investment of cash in qualified
22 28 businesses; the person has a net worth, at the time of
22 29 application, of at least \$750,000 and has at least \$5 million
22 30 in cash, cash equivalents, or marketable securities; the
22 31 directors, officers, general partners, trustees, managers,
22 32 members, or persons having a similar function are familiar
22 33 with the requirements of the bill; at least two officers,
22 34 directors, general partners, trustees, managers, or members
22 35 each have at least four years of experience in the venture
23 1 capital industry; proper notice requirements have been met in
23 2 any offering material involving the sale of securities; the
23 3 person has paid a nonrefundable application fee; and the
23 4 person has not engaged in dishonest or unethical practices.
23 5 The bill provides that the department may certify an Iowa
23 6 agricultural industry finance corporation as a certified
23 7 capital company provided that other criteria are met.

23 8 The bill provides that a certified capital investment is an
23 9 investment in a certified capital company that is certified by

23 10 the department and fully funds either the investor's equity
23 11 interest in a certified capital company or a qualified debt
23 12 instrument that a certified capital company issues. The bill
23 13 provides that the department shall not certify a total of more
23 14 than \$100 million in certified capital investments. The bill
23 15 provides that the department shall not certify more than 25
23 16 percent of the total certified capital investments allowed for
23 17 investments in an agricultural industry finance corporation
23 18 which is a certified capital company. The bill provides that
23 19 prior to the first day of the 13th month beginning after the
23 20 effective date of the bill, a certified investor, together
23 21 with all affiliates of the certified investor, shall not have
23 22 invested more than \$15 million in certified capital
23 23 investments. The bill provides that, if, as a result of the
23 24 investment limitations, the department does not certify the
23 25 full amount requested in applications for certified capital
23 26 investments, the department shall allocate the amounts
23 27 available for certification on a pro rata basis. The bill
23 28 provides that an insurance company, group of insurance
23 29 companies, affiliate of an insurance company, or group of such
23 30 affiliates shall not beneficially own 10 percent or more of
23 31 the equity securities in, be a general partner or manager of,
23 32 or otherwise control the investments of a certified capital
23 33 company. The bill provides requirements for certification of
23 34 capital investments relating to the aggregate amount of
23 35 capital certified on behalf of all of the certified investors

24 1 of a certified capital company.
24 2 The bill provides a business is a qualified business if the
24 3 business is in need of venture capital and is unable to obtain
24 4 sufficient conventional financing, the business is
24 5 headquartered in this state and its principal business
24 6 operations are located in this state, the business has no more
24 7 than 100 employees, at least 75 percent of whom are employed
24 8 in the state, the business has an average annual net income of
24 9 not more than \$5 million, the business has a net worth that is
24 10 not in excess of \$15 million, the business is not
24 11 predominately engaged in the provision of professional
24 12 services provided by accountants, attorneys, or physicians,
24 13 the business is not engaged in the development of real estate
24 14 for resale, the business is not engaged in banking or lending
24 15 and does not make any loans to, or investments in, certified
24 16 capital companies, the business is predominantly engaged in
24 17 certain industries, it is the intent of the business to
24 18 provide long-term attractive compensation packages with many
24 19 of the compensation packages, and the business intends to
24 20 retain its operations and employees in the state after receipt
24 21 of investments from a certified capital company. The bill
24 22 allows certain qualified businesses to receive follow-on
24 23 investments under certain circumstances.

24 24 The bill provides that an investment is a qualified
24 25 investment if the investment is a cash investment which meets
24 26 certain requirements, the qualified business agrees not to use
24 27 the proceeds from the investment for the purpose of relocating
24 28 its operations, and the qualified business agrees, as long as
24 29 the certified capital company continues to hold the
24 30 investment, to keep its headquarters in this state, maintain
24 31 at least 75 percent of its employees in this state, and
24 32 maintain at least 75 percent of its employees at work sites
24 33 that were maintained by the qualified business at the time
24 34 that the investment was made, unless certain circumstances
24 35 arise. The bill also provides alternatives to certain
25 1 requirements. The bill provides a schedule regarding the
25 2 percentage of a certified capital company's investment pool
25 3 that must be in qualified investments.

25 4 The bill requires a certified capital company to meet
25 5 certain reporting requirements after the receipt of a
25 6 certified capital investment, after the receipt of information
25 7 by the certified capital company that a qualified business has
25 8 violated an agreement, and regarding annual activities and
25 9 audits. The bill allows the department to impose an
25 10 administrative penalty on a certified capital company that
25 11 violates the provisions of the bill. The bill provides that
25 12 the amount of the penalty shall not exceed \$25,000, and each
25 13 day a violation continues or occurs is a separate violation
25 14 for the purpose of imposing a penalty.

25 15 The bill provides conditions under which a certified
25 16 capital company may make distributions. The bill requires the
25 17 department to conduct an annual review of each certified
25 18 capital company. The bill provides for the voluntary and
25 19 involuntary decertification of a certified capital company and
25 20 the disqualification of a noncomplying investment pool. The

25 21 bill requires the department to file a report with the general
25 22 assembly every two years regarding certified capital companies
25 23 and the department's assessment of the impact of certified
25 24 capital companies.

25 25 The bill allows a certified investor to earn, two years
25 26 after it makes a certified capital investment, a vested tax
25 27 credit against the insurance premium tax liability of the
25 28 certified investor equal to the total amount of the certified
25 29 investor's certified capital investment. The bill provides
25 30 that a certified investor shall be entitled to claim up to 10
25 31 percent of the vested premium tax credit in any taxable year
25 32 of the certified investor. The bill provides that the credit
25 33 to be applied against a certified investor's premium tax
25 34 liability in any one year shall not exceed such certified
25 35 investor's premium tax liability for such taxable year and any
26 1 credit in excess of the tax liability for a taxable year may
26 2 be credited to the tax liability for succeeding taxable years
26 3 until depleted. The bill provides for a recapture tax in the
26 4 case of decertification of a certified capital company or
26 5 disqualification of an investment pool. The bill allows for
26 6 the sale of a certified capital company tax credit. The bill
26 7 provides that once a certified capital company has voluntarily
26 8 decertified all investment pools under its control, the
26 9 certified capital company shall not be subject to regulation
26 10 by the department; however, the department shall continue to
26 11 monitor any qualified business which received an investment
26 12 from the decertified certified capital company and make an
26 13 annual report to the general assembly by January 31 of each
26 14 year regarding the monitoring of qualified businesses.

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